

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Tsui	Team: Squad #15	CCRB Case #: 202102156	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/20/2021 5:17 PM	Location of Incident: Inside of § 87(2)(b)	Precinct: 115	18 Mo. SOL 9/20/2022	EO SOL 9/20/2022	
Date/Time CV Reported Fri, 03/26/2021 5:20 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/05/2021 11:26 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Rocco Martocci	06671	947225	115 PCT
2. POM Dominick Morales	19980	962627	115 PCT
3. SGT Luis Cabrera	03341	918802	115 PCT
4. An Officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Crescione	17906	966520	115 PCT
2. POM Mcallister Bryan	01817	963420	115 PCT
3. POM Neil Sinckler	27102	968809	115 PCT
4. POM Brendan Leonard	16781	966665	115 PCT
5. POM Andrew Buzzetta	20411	962961	115 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Luis Cabrera	Abuse: Sergeant Luis Cabrera entered § 87(2)(b) in Queens.	§ 87(2)(b)
B.POM Rocco Martocci	Abuse: Police Officer Rocco Martocci entered § 87(2)(b) in Queens.	§ 87(2)(b)
C.POM Dominick Morales	Abuse: Police Officer Dominick Morales entered § 87(2)(b) in Queens.	§ 87(2)(b)
D.POM Rocco Martocci	Abuse: Police Officer Rocco Martocci searched § 87(2)(b) in Queens.	§ 87(2)(b)
E.POM Dominick Morales	Abuse: Police Officer Dominick Morales searched § 87(2)(b) in Queens.	§ 87(2)(b)
F. An Officer	Abuse: An officer seized § 87(2)(b) s property.	§ 87(2)(b)

## Case Summary

§ 87(2)(b) filed this complaint with IAB on March 26, 2021, generating Log #§ 87(2)(b). The CCRB received this complaint on April 5, 2021.

On March 20, 2021, at approximately 5:13 PM, § 87(2)(b)'s roommate, § 87(2)(b) called 911 to report that § 87(2)(b) physically assaulted her in their home, located at § 87(2)(b) in Queens. § 87(2)(b) reported to the 911 operator that she sustained unspecified injuries.

At approximately 5:17 PM, Sergeant Luis Cabrera, Police Officer Mcallister Bryan, Police Officer Rocco Martocci, and Police Officer Dominick Morales of the 115<sup>th</sup> Precinct responded to the location. SGT Cabrera knocked on the front door and instructed § 87(2)(b) and § 87(2)(b) to come out. When the door opened, SGT Cabrera and PO Martocci observed bruises on § 87(2)(b)'s body. The officers separated § 87(2)(b) and § 87(2)(b). PO Martocci placed § 87(2)(b) in handcuffs. SGT Cabrera, and other officer walked into the house and took a statement from § 87(2)(b) in the first floor living room (**Allegation A: Abuse of Authority, § 87(2)(g)**). Other officers remained outside with § 87(2)(b) who sat on the front steps. PO Martocci came outside and asked for § 87(2)(b)'s identification. § 87(2)(b) stated that he did not have identification on his person. § 87(2)(b) was transported to the 115<sup>th</sup> Precinct station house and processed. PO Martocci and PO Morales entered the house again and then into § 87(2)(b)'s bedroom on the second floor (**Allegation B: Abuse of Authority, § 87(2)(g)**) (**Allegation C: Abuse of Authority, § 87(2)(g)**). PO Martocci searched § 87(2)(b)'s backpack for his identification (**Allegation D: Abuse of Authority, § 87(2)(g)**) and PO Morales searched § 87(2)(b)'s bedroom closet (**Allegation E: Abuse of Authority, § 87(2)(g)**). On March 21, 2021, PO Martocci and PO Morales escorted § 87(2)(b) back to the house to retrieve his personal belongings. § 87(2)(b) went to his bedroom on the second floor and discovered that his backpack had been searched and that he was allegedly missing a bank check, along with his headphones, laptop charger (**Allegation F: Abuse of Authority, § 87(2)(g)**).

§ 87(2)(b) was arrested and charged with assault (Board Review 1) as of result of the incident.

The investigation revived BWC video footage for. The BWC video footage for PO Martocci (Board Review 10), PO Bryan (Board Review 11), PO Morales (Board Review 12), and SGT Cabrera (Board Review 13) are attached to IA #103, IA #104, IA #105, IA #106, respectively.

## Findings and Recommendations

### Allegation (A) Abuse of Authority: Sergeant Luis Cabrera entered § 87(2)(b) in Queens.

§ 87(2)(b) stated (Board Review 2) that he resided at § 87(2)(b) with his roommate, § 87(2)(b). § 87(2)(b) and § 87(2)(b) were in a romantic relationship in the past. § 87(2)(b) retained intimate videos of him in the shower. Prior to the incident, § 87(2)(b) asked § 87(2)(b) to delete the videos off her cellphone and she refused. On March 20, 2021, § 87(2)(b) and § 87(2)(b) got into an argument over the videos. Slightly before 5:00 PM, § 87(2)(b) attempted to take § 87(2)(b)'s cellphone. § 87(2)(b) punched and threw her high heel shoes at § 87(2)(b) and then ripped off his t-shirt. At approximately 5:13 PM, § 87(2)(b) called 911 to report that § 87(2)(b) physically assaulted her, however, § 87(2)(b) denied that he physically assaulted § 87(2)(b). At approximately 5:17 PM, § 87(2)(b) heard police sirens outside of his house. § 87(2)(b) grabbed § 87(2)(b)'s hand, and they walked to the front door. § 87(2)(b) opened the front door and observed SGT Cabrera, PO Brayan,

PO Martocci, PO Morales, and other officers. § 87(2)(b) told the officers that § 87(2)(b) called the police. § 87(2)(b) stepped outside while § 87(2)(b) remained at the door. § 87(2)(b) told the officers that he did not assault § 87(2)(b). PO Martocci placed § 87(2)(b) in handcuffs and sat him down on the front steps. SGT Cabrera, PO Bryan PO Martocci, PO Morales entered the house to speak with § 87(2)(b). § 87(2)(b) did not hear § 87(2)(b) and the officers' conversation. § 87(2)(b) spoke with other officers on the front steps and described the conversation as friendly. § 87(2)(b) who was shirtless and barefoot at the time, requested PO Bryan to retrieve additional clothing for him in his bedroom because he wanted to be removed in a dignified manner. PO Bryan went to § 87(2)(b)'s bedroom and got a shirt and a pair of shoes for him.

§ 87(2)(b) declined to provide the CCRB with a statement.

SGT Cabrera (Board Review 4), PO Bryan's (Board Review 14), and PO Martocci's (Board Review 3) CCRB statements were largely similar. The officers received a radio run in regard to a domestic assault in progress at § 87(2)(b). The report stated that § 87(2)(b) assaulted § 87(2)(b) the female caller. SGT Cabrera and PO Bryan were the first officers to respond. SGT Cabrera and PO Bryan approached the front door and heard yelling and screaming coming from inside of the house. SGT Cabrera banged on the front door, and yelled instructions for § 87(2)(b) and § 87(2)(b) to exit. PO Martocci and PO Morales and other officers from the 115<sup>th</sup> Precinct arrived at this time. § 87(2)(b) opened the door. § 87(2)(b) stood in front, and § 87(2)(b) was behind him. SGT Cabrera and PO Martocci observed bruises on § 87(2)(b)'s arms and face. § 87(2)(b)'s physical condition was apparently normal with no visible injuries, bruises, cuts, or wounds. § 87(2)(b) was shirtless, had no belt on and his pants were falling off of his waist. § 87(2)(b) appeared upset and excited. SGT Cabrera instructed § 87(2)(b) to step out of the door. § 87(2)(b) yelled and swayed his arms in the air when he exited the house. § 87(2)(b) complied, and PO Martocci placed § 87(2)(b) in handcuffs and under arrest. PO Martocci sat § 87(2)(b) down on the front steps. PO Martocci and PO Morales walked inside the house to interview § 87(2)(b) in the living room. The officers learned that § 87(2)(b) and § 87(2)(b) were romantically involved in the past and that § 87(2)(b) assaulted § 87(2)(b) over intimate videos of him she had on her cellphone. SGT Cabrera walked in and out of the front entrance to observe § 87(2)(b) and § 87(2)(b). SGT Cabrera and PO Martocci stated that neither § 87(2)(b) nor § 87(2)(b) told the officers that they could not enter the house at this time.

According to the event information for ICAD event #§ 87(2)(b) (Board Review 5), at 7:13 PM, § 87(2)(b) called 911 to report that that § 87(2)(b) beat her and that she sustained injuries from an unknown weapon. The operator noted that there was a male screaming in the background during the call.

According to SGT Cabrera's BWC video (Board Review 13), at timestamp 01:13, SGT Cabrera arrive at the location with PO Bryan. SGT Cabrera knocks on the front door. SGT Cabrera identifies himself at the police. SGT Cabrera instructs § 87(2)(b) and § 87(2)(b) to open the front door. SGT Cabrera tells PO Bryan that he hears yelling from the inside house. At timestamp 02:56, the front door opens. § 87(2)(b) and § 87(2)(b) stand by the front door. § 87(2)(b) is shirtless and tells the officers "Everything is okay." SGT Cabrera instructed § 87(2)(b) to step out of the house. § 87(2)(b) yells at officers and tell them to not let § 87(2)(b) touch his cellphone. SGT Cabrera tell § 87(2)(b) to relax and be quiet. Officer interview § 87(2)(b) outside and on the front steps and § 87(2)(b) who was inside of the house, separately.

According to PO Morales' BWC (Board Review 12), at timestamp 01:05, § 87(2)(b) opens the front door. SGT Cabrera grabbed the door handle and walks into the house with PO Bryan. PO Morales follows SGT Cabrera and PO Bryan. SGT Cabrera instructed § 87(2)(b) to step out of the

house. SGT Cabrera instructed § 87(2)(b) to step out of the house and onto the stoop. At timestep 01:29, SGT Cabrera exits the front door and stand next to the doorway. § 87(2)(b) yells at officers and tell them to not let § 87(2)(b) touch his phone because she will delete his files. § 87(2)(b) yells back at § 87(2)(b) and tells him that she will not delete anything. § 87(2)(b) walks towards the front door. PO Morales instructs § 87(2)(b) to walk back inside the house. PO Morales, PO Bryan enter the living room with § 87(2)(b). SGT Cabrera walks past the front entrance and stands next to the hallway between the front door and living room. At timestamp 02:23, § 87(2)(b) tells PO Morales that earlier on the incident date, § 87(2)(b) entered her bedroom and talked on his phone and that that she has a video of § 87(2)(b) using the bathroom. When § 87(2)(b) asked § 87(2)(b) to exit her bedroom, § 87(2)(b) refused in retaliation of the intimate videos she captured of him. At timestamp 02:59, there are visible bruises on § 87(2)(b)'s face and left bicep. PO Morales asks § 87(2)(b) what caused the bruising on her face. § 87(2)(b) tells PO Morales that § 87(2)(b) hit her after she asked him to exit her bedroom, and hit him with a shoe.

According to People v. Thatcher 9A.D.3d 682, 779 N.Y.S.2d 818 (App. Term, 3<sup>rd</sup> Dept., 2004) (Board Review 6), officers are permitted to conduct a warrantless entry if "(1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. (2) The search must not be primarily motivated by intent to arrest and seize evidence. (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched." An officer may conduct a warrantless entry when responding to a report of domestic violence and, upon arrival, are confronted by evidence of a physical struggle inside the residence.

According to the 911 print out, § 87(2)(b) reported that she was physically assaulted by § 87(2)(b) and that she sustained unspecified injuries. The 911 operator noted that a male was yelling in the background. Upon responding to the location, SGT Cabrera also heard yelling from the inside of the house. When the door opened, SGT Cabrera and PO Martocci observed a shirtless § 87(2)(b) with § 87(2)(b) behind him. At this time, SGT Cabrera and Po Martocci observed visible bruises on § 87(2)(b)'s body. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B): Police Officer Rocco Martocci entered § 87(2)(b) in Queens.**

**Allegation (C): Police Officer Dominick Morales entered § 87(2)(b) in Queens.**

**Allegation (D): Police Officer Rocco Martocci searched § 87(2)(b) in Queens.**

**Allegation (E): Police Officer Dominick Morales searched § 87(2)(b) in Queens.**

**Allegation (F): An officer seized § 87(2)(b)'s property.**

When § 87(2)(b) stated (Board Review 2) that when sat on his front steps in handcuffs, PO Bryan asked § 87(2)(b) if he had identification. § 87(2)(b) told PO Bryan that his identification was in his bedroom on the second floor. § 87(2)(b) asked PO Bryan to take him upstairs. PO Bryan told him that he cannot. § 87(2)(b) was escorted to a patrol vehicle and transported to the 115<sup>th</sup> Precinct station house. § 87(2)(b) was processed and lodged in a holding cell. § 87(2)(b) was taken to Central Booking where the judge informed § 87(2)(b) that § 87(2)(b) had obtained an order of protection against him, and that he cannot return to his house. § 87(2)(b) was charged with assault and released. On March 21, 2021, at approximately 6:00 PM. PO Martocci and PO Morales escorted § 87(2)(b) back into his house for the purpose of retrieving his personal belongings. § 87(2)(b)

§ 87(2)(b), PO Martocci and PO Morales entered the house and § 87(2)(b) was present inside. § 87(2)(b) went to his bedroom and observed that his backpack was unzipped and its content on the bed. § 87(2)(b)'s school identification was next to it. § 87(2)(b) asked PO Martocci and PO Morales to ask § 87(2)(b) if she had searched his bedroom. PO Martocci told § 87(2)(b) that he searched his bedroom the day prior for his identification. § 87(2)(b) searched his backpack and discovered that he was missing a bank check, his headphones, laptop charger. § 87(2)(b) was not aware that his bedroom was searched prior to this time.

PO Martocci stated (Board Review 3) that after it was determined that § 87(2)(b) did not have an identification on his person, PO Martocci asked § 87(2)(b) to take him and his partner to § 87(2)(b)'s bedroom. PO Martocci did not ask § 87(2)(b) for consent to enter his bedroom. PO Martocci testified that he intended to enter § 87(2)(b)'s bedroom only to look for § 87(2)(b)'s identification. PO Martocci stated that he needed the identification to verify § 87(2)(b)'s identity and to document the incident accurately. § 87(2)(b) led PO Martocci and PO Morales to § 87(2)(b)'s bedroom and the officers entered it. PO Morales opened § 87(2)(b)'s closets. PO Martocci searched a pair of pants and observed a backpack on the bed. PO Martocci opened the backpack and found § 87(2)(b)'s college identification card inside. PO Martocci denied removing a bank check, a pair headphone, and a laptop charger from § 87(2)(b)'s backpack or bedroom. PO Martocci did not witness PO Morales remove items from the bag or the bedroom. PO Martocci did not believe that § 87(2)(b) was aware that he and PO Morales entered his bedroom.

SGT Cabrera stated (Board Review 4) that he did not recall if any officers had a conversation with § 87(2)(b) in regard to obtaining his identification. SGT Cabrera stated that if an individual was arrested outside of their home and did not have identification on their person, officers would request a family member to retrieve their identification on their behalf. SGT Cabrera further stated if no family members are present, much like this incident, and if the individual did not provide officers with the location or permission to retrieve their identification, then officers can remove the individual to the station house for further investigation. SGT Cabrera stated that an individual has the right to refuse an officer's request to search for their identification. SGT Cabrera stated that it was possible that officers entered § 87(2)(b)'s bedroom to retrieve identification, however he did not recall which officers did or if he instructed any officers to. SGT Cabrera did not know if any items from § 87(2)(b)'s bedroom was seized by any officers.

PO Bryan stated (Board Review 14) that when he entered § 87(2)(b)'s bedroom at the request of § 87(2)(b) to retrieve a shirt and a pair of shoes for him before his removal to the station house. PO Bryan did not remove additional items from § 87(2)(b)'s bedroom.

The investigation was unable to interview PO Morales. According to CCRB CTS database and confirmed by the 115<sup>th</sup> Precinct Roll Call, he resigned from the NYPD on June 2, 2022. A request for confirmation of PO Morales' employment was submitted to DAO on July 12, 2022.

According to PO Martocci's BWC video, at timestamp 09:43, PO Bryan asks § 87(2)(b) if he has identification. § 87(2)(b) says yes but does not say where it is. PO Martocci says, "I need his ID." At the same time, SGT Cabrera instructs officers to remove § 87(2)(b) to the patrol vehicle for transport, "Just put him in the car. We got to go...He's got shirt and shoes. He is good enough." At timestamp 10:08, PO Morales asked PO Martocci if § 87(2)(b) told him where his identification was. PO Martocci says no and asks PO Morales to ask § 87(2)(b) for § 87(2)(b)'s information. PO Morales asks § 87(2)(b) for § 87(2)(b)'s name and date of birth. § 87(2)(b) does not reply. At timestamp 10:23, PO Martocci instructs PO Morales, "Go back upstairs and we'll find his ID." PO Morales asks § 87(2)(b) to take him and PO Martocci to § 87(2)(b)'s bedroom. PO Morales asks § 87(2)(b) "Show me where he is. Show me the bedroom." At timestamp 11:08, PO Martocci follow

§ 87(2)(b) and PO Morales to § 87(2)(b) bedroom. § 87(2)(b) stands by the doorway and PO Martocci and PO Morales enter. At timestamp 11:28, PO Martocci picks up a pair of pants by the bed post and searches it. PO Morales opens a closet door and looks inside. At timestamp 1:41, PO Martocci asks PO Morales if he found any mail belonging to § 87(2)(b). PO Morales tells PO Martocci that he found § 87(2)(b)'s credit card in the closet. At timestamp 12:02, PO Morales places the credit card on the bed. At timestamp 12:10, PO Martocci searches a red back pack on the bed while PO Morales takes a picture of § 87(2)(b)'s credit card with his name on it. PO Martocci finds § 87(2)(b)'s school identification inside his backpack and hands it to PO Morales. PO Morales takes a picture of § 87(2)(b)'s identification. At timestamp 13:32, PO Martocci and PO Morales walk down to the first floor and exit. Neither officer is seen taking any other items.

According to PO Bryan's BWC video (Board Review 11), at timestamp 7:26, PO Bryan enters § 87(2)(b)'s bedroom and picks up a shirt and a pair of shoes from the floor and left the bedroom. Neither officer is seen taking any other items.

While SGT Cabrera was the ranking supervisor on-scene during this incident, the BWC footage shows that SGT Cabrera told PO Martocci and PO Morales that there was nothing else they needed to retrieve for § 87(2)(b) and that it was time to leave. The footage further shows that PO Martocci and PO Morales subsequently decided to enter § 87(2)(b)'s bedroom after deliberating between themselves. As such, separate search and entry allegations have been pleaded against PO Martocci and PO Morales, rather than SGT Cabrera.

According to People v. Thatcher 9A.D.3d 682, 779 N.Y.S.2d 818 (App. Term, 3<sup>rd</sup> Dept., 2004) (Board Review 6), officers are permitted to conduct a warrantless entry if "(1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. (2) The search must not be primarily motivated by intent to arrest and seize evidence. (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched." An officer may conduct a warrantless entry when responding to a report of domestic violence and, upon arrival, are confronted by evidence of a physical struggle inside the residence.

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
The secondary entry of § 87(2)(b)'s bedroom occurred after § 87(2)(b) was removed and no longer posed a threat to § 87(2)(b)

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

§ 87(2)(g)

PO Morales resigned from the NYPD on June 2, 2022. § 87(2)(g)  
§ 87(2)(g)

According to the BWC video footage received, PO Martocci retrieved § 87(2)(b)'s school identification from the backpack in his bedroom. From the footage, it was clear that PO Martocci did not remove additional items from § 87(2)(b)'s backpack or bedroom. § 87(2)(g)

§ 87(2)(g)  
§ 87(2)(g)

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 7).
- SGT Cabrera has been a member of service for twenty-five years and has been a subject in nine CCRB complaints and eleven allegations, of which two were substantiated. § 87(2)(g)  
[REDACTED]
  - #9900004 involved substantiated allegations of Abuse of Authority - Other against SGT Cabrera. He received instructions.
  - # 200717220 involved substantiated allegations of Abuse of Authority – Vehicle Search against SGT Cabrera. The Board recommended instructions and the NYPD imposed instructions.
- PO Martocci has been a member of service for thirteen years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)  
[REDACTED]

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of September 1 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (Board Review 8).

• § 87(2)(b)  
[REDACTED]  
[REDACTED]

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Squad: 15

Investigator:	Jeffrey Tsui Signature	INV Jeffrey Tsui Print Title & Name	07/14/2022 Date
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Squad Leader:	Owen Godshall Signature	SI Owen Godshall Print Title & Name	7/14/2022 Date
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Reviewer:	Signature	Print Title & Name	Date
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